

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 N. Capitol Street, NE, Suite 9100
Washington, DC 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Petitioner,

v.

ADDISU WOLDE
Respondent

Case No.: CR-I-06-Q103119

FINAL ORDER

I. Introduction

This case involves a Notice of Infraction served by the Government on Respondent Addisu Wolde on July 11, 2006, alleging a violation of 14 DCMR 901.1 for failing to maintain a fire extinguisher in operable condition.¹ In the Notice, the Government alleged that the violation occurred on June 8, 2006 at 1219 Missouri Ave., N.W. (the “Property”). The Government seeks a fine of \$2,000 for the violation.

Respondent did not file an answer to the Notice of Infraction within the required 20 days after service (15 days plus 5 additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on April 11, 2007, this administrative court issued a Notice of Default finding Respondent in default and subject to a statutory penalty equal to and in addition to the fine, and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Official Code §§ 2-1802.02(f) and

¹ 14 DCMR 901.1 provides:

The operator of each housing business shall maintain all required fire extinguishing equipment in an operable condition.

2-1801.04(a)(2)(A).

On April 17, 2007, Respondent filed an answer with a plea of Deny. A hearing was then set for May 8, 2007. At the hearing convened on that date, Geraldine Owens of the Office of Civil Infractions appeared for the Government and presented the Government's case based on documents and an interview with the charging inspector prior to the hearing. Addisu Wolde, the owner of the Property, appeared on his own behalf.

II. Findings of Fact

The Property is a four-unit apartment building. Respondent purchased the building in March 2006, but did not move into an apartment in the building until about a year later in March 2007. Petitioner's Exhibit "PX" 103.

Inspector Lakeitha Stroman conducted an inspection of the Property on June 8, 2006. She observed a fire extinguisher in the common hallway that had not been serviced since 2002. PX 100-101. Based on her observation that day, she issued a Notice of Infraction seeking \$2,000 in fines for the violation. She did not issue a Notice of Violation, provided for by 14 DCMR 105, giving notice of the violation and an opportunity to correct it.²

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105.1 Whenever any duly designated agent of the District finds reasonable grounds to believe that a violation of any provision of this subtitle exists, he or she shall make a report to the Director, who may give notice of the alleged violation to the person or persons responsible for that violation.

105.2 Each notice of violation shall be in writing and shall meet the following requirements:

- (a) State the nature of the violation;
- (b) Indicate the section or sections of this subtitle being violated;

Respondent never received the Notice of Infraction, which was mailed to the Property. It was mailed to the Property before he moved there and may have been picked up by one of the tenants and not forwarded to him. The first notification of the violation he received was the the Notice of Default issued by this administrative court on April 11, 2007. After receiving the Notice of Default, Respondent brought the extinguisher to F&M Protection Service and had it serviced and charged at a cost of \$24.41. Respondent's Exhibit "RX" 200.

III. Conclusions of Law

The Government may enforce most regulations to which the Civil Infraction Act applies by seeking fines in Notices of Infraction without prior notice or opportunity to correct the violation. However, by virtue of section 105, prior notice and a reasonable opportunity to correct is required before the Government may seek fines and penalties for housing code violations in Subtitle A of Title 14, which includes Chapters 1-13 of Title 14. 14 DCMR 100.1. This requirement has been recognized in numerous decisions issued by this administrative court. *See*, for example, *DCRA v. Abdullahi Barrow* OAH No. CR-I-06-R102358 (Final Order 2006); *DCRA v. Ricky Bryant* OAH No. CR-I-05-Q100031 (Final Order 2005) ³

(c) Allow a reasonable time for the performance of any act required by the notice; and

(d) Be signed by the Director or the Director's authorized agent

105.3 Each notice shall be served upon the person or persons responsible for correcting the violation described in the notice.

³ These orders will soon be available on the LEXIS system in the "District of Columbia Office of Administrative Hearings Decisions."

It is undisputed that Respondent was not served with a Notice of Violation, giving him an opportunity to correct the violation, before a Notice of Infraction was issued seeking a fine. . The provision that Respondent was charged with violating, 14 DCMR 900.1, appears in Subtitle A.⁴ As a consequence, a necessary prerequisite for the issuance of a Notice of Infraction in this case was not satisfied and the Notice of Infraction must be dismissed. It should be noted, in addition, that if the Respondent had received a Notice of Violation as required by 14 DCMR 105, the violation could have been remedied much sooner.

There remains, however, another issue that must be addressed in this case. Respondent did not file an answer to the Notice of Infraction served on May 25, 2006 until January 17, 2007, more than seven months later.

The Civil Infractions Act requires a respondent to demonstrate “good cause” for failing to answer a Notice of Infraction within 20 days of the date of service by mail. If the respondent cannot make such a showing, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

In this case, Respondent has testified credibly that he did not receive the Notice of Infraction. This establishes good cause for failing to answer it. Accordingly, a statutory penalty for the late filing will not be imposed.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this 9th day of May , 2007:

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Subtitle A includes Chapters 1-13 of Title 14. *See* 14 DCMR 100.1.

ORDERED, that the Notice of Infraction (Q103119) is **DISMISSED**, and it is further:

ORDERED, that appeal rights of any person aggrieved by this Order are set forth below.

May 9, 2007

_____/s/_____
Mary Masulla
Administrative Law Judge